IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.4202 OF 2006
IN
SUIT NO.292 OF 1970

Draupadi Devi Mahabirprasad
Nemani & Ors. ...Plaintiffs

V/s.

Mohanlal Thakersidas Nemini & Ors. ...Defendants

And

Mr.Vinod Loonkaran Shiv Bhagwan ...Applicant

.....

Mr.S.K.Chaurasia i/b Mr.A.M.Saraogi for Applicant.

Mr.Jitendrakumar M.Nemani, Plaintiff 1(3)/2 is present in-person.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 7, 2007.

P.C.

1. None appears for the Applicant when the matter is called out. Dismissed for non-prosecution.

2. Later on, Advocate for the Applicant

mentioned the matter requesting to restore the matter on the ground that at the relevant time, he was held up in some other Court.

3. The Advocate was given liberty to mention the matter after giving notice to the Plaintiff No.1(3)/2 who was appearing in-person.

4. For the reason stated by the Advocate for the Applicant, order dismissing the Notice of Motion for non-prosecution is recalled. Instead, the Notice of Motion is restored to the file to its original number and proceeded on merits forthwith by consent.

5. The limited relief claimed by the Applicant in the present Motion is to issue directions to the Court Receiver to take appropriate legal steps to follow up the matter with MHADA Authority in relation to the repair of the suit building, in particular, the room occupied by the Applicant at the earliest and within time specified by this Court.

6. Insofar as this relief is concerned, the Plaintiff No.1(3)/2 who appears in-person submits that he has no objection if such direction is issued. According to him, however, MHADA should take steps to repair the entire building including the portion occupied by the Plaintiff. Besides, Plaintiff No.1(3)/2 submits that the Court Receiver is taking steps to dispossess the Plaintiff even though the building is in good shape and habitable condition.

7. It is not necessary to enter into the controversy raised by the Plaintiff, in the present Motion. Insofar as the present Motion is concerned, there is nothing to suggest that the Court Receiver has any objection for pursuing the matter with MHADA for repair of the suit building. If it is so, the Court Receiver may take such steps as may be required in accordance with law to pursue the matter with MHADA for repair of the building in question.

8. It is made clear that if MHADA Authority has already issued notice to the occupants to

vacate the premises in the suit building on the ground that the building has become dangerous, those aspects will have to be kept in mind while considering the directions issued in this Motion. In other words, if the condition of the building is such that repairs cannot undo the damaged portion of the building or restore the stability of the building, it will be open to the MHADA Authority to proceed in accordance with law, which issue will be considered on its own merits as and when occasion arises.

9. It is once again made clear that I am not expressing any opinion with regard to the correctness of the stand of the Plaintiff No.1(3)/2 that the condition of the building is stable and does not require to be pulled on being dilapidated condition. Those aspects will have to be considered in appropriate proceedings.

10. Notice of Motion disposed of on the above terms.

11. The Receiver may take necessary steps at

the earliest, preferably within four weeks from the receipt of this order and report compliance.

A.M.KHANWILKAR, J.